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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/700,144	11/03/2003	Mark A. Neil	10011.002300 (P1240)	3845
31894	7590	10/05/2004	EXAMINER	
OKAMOTO & BENEDICTO, LLP				GURZO, PAUL M
P.O. BOX 641330				ART UNIT
SAN JOSE, CA 95164				PAPER NUMBER
				2881

DATE MAILED: 10/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/700,144	NEIL ET AL.	
	Examiner	Art Unit	
	Paul Gurzo	2881	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 30 August 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-7 and 11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-7 and 11 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 30 August 2004 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-7 and 11 stand rejected under 35 U.S.C. 102(e) as being anticipated by Gerlach et al. (6,683,320).

Regarding claims 1 and 11, 320 teaches an electron beam inspection apparatus and method for automated focusing of an electron image comprising determining a filter cut-off voltage (508) and adjusting the focusing condition to compensate for the change in filter cut-off voltage (col. 6, lines 33-49, col. 7, line 62 - col. 8, line 6, and Fig. 5). In addition, 320 teaches that because the primary beam can be focused to a very small spot, the resolution of the image can be quite high (col. 3, lines 65-67).

Regarding claim 2, Fig. 5 clearly shows different energy filter voltage values and teaches different measurements of intensity values of detected secondary electrons (col. 3, lines 61-67), and these values are used to determine the energy filter cut-off voltages (col. 7, line 62 - col. 8, line 6).

Regarding claim 3, 320 teaches that the sample (114) is biased and it is inherent that this bias is maintained in correspondence to the cut-off voltage (col. 4, lines 42-47 and col. 6, lines 9-49).

Regarding claims 4-7, 320 teaches the use of objective lens (112) focusing strength, extraction strength, source voltage, and contrast-based focusing (col. 5, line 50 - col. 6, line 49 and Fig. 1 and 2).

Response to Arguments

Applicant's arguments filed 8/30/04 have been fully considered but they are not persuasive. Applicant argues that the prior art does not teach adjusting the focusing of an electron imaging system based on an energy filter cut-off voltage to maintain a focus of the electron image. The Examiner maintains that 320 teaches a filter cut-off voltage (508) and this voltage will adjust the focusing condition because only a desired amount of electrons can pass through the filter based on the cut-off voltage. In addition, 320 teaches that because the primary beam can be focused to a very small spot, the resolution of the image can be quite high (col. 3, lines 65-67), thus teaching on the claimed electron imaging system that is based on a focusing means.

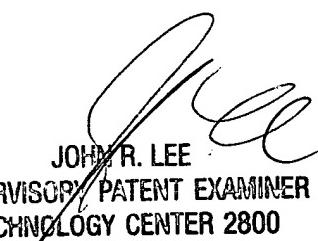
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Gurzo whose telephone number is (571) 272-2472. The examiner can normally be reached on M-Fri. 7:30 - 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Lee can be reached at (571) 272-2477. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9306 for After Final communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

PMG



JOHN R. LEE
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TECHNOLOGY CENTER 2800